[*Submitting Counsel on Signature Page*]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT ADDICTION/PERSONAL INJURY PRODUCTS LIABILITY LITIGATION,

This Document Relates To:

ALL ACTIONS

MDL No. 3047
Case No. 4:22-md-03047-YGR

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE PLAINTIFFS' EXPERTS' GENERAL CAUSATION OPINIONS FOR FAILURE TO ACCOUNT FOR SECTION 230 AND THE FIRST AMENDMENT

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

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I. INTRODUCTION

Plaintiffs' general causation experts—leaders in their fields—offer testimony that will help the jury understand how the adolescent brain develops and how the addictive design of Defendants' platforms harms teens. Because these experts' opinions are the product of reliable principles and methods and "provide[] information beyond the common knowledge of the trier of fact," they should be heard by the jury. *United States v. Finley*, 301 F.3d 1000, 1008 (9th Cir. 2002).[1]

Defendants, however, have moved to exclude all causation testimony based on a counterfactual world where this Court dismissed failure to warn and the State AGs' deception claims, and only allowed certain features to be part of this case. *Contra* ECF 1214 at 36-37. The Court can deny Defendants' motion on that false predicate alone. But Defendants' motion is flawed for additional reasons. Defendants misunderstand the nature of Section 230, attempting to write a "but for" test into the statute that the Ninth Circuit, this Court, and the JCCP court have repeatedly rejected. Further, Defendants misconstrue Section 230 as a rule of evidence, improperly trying to use it to cordon off relevant and admissible evidence.

Defendants focus on these wrong-headed arguments on Section 230 while largely failing to address the bedrock *Daubert* requirements, which support the admission of Plaintiffs' general causation experts' testimony because these qualified experts have applied a reliable methodology

[1] Those conclusions are not controversial based on the evidence: adolescent brains are "[redacted][,]" ECF 2298-59 (Telzer Rep.) ¶ 4; "[redacted][,]" ECF 2298-21 (Cingel Rep.) ¶ 6; *see* Ex. 1 (Prinstein Rep.) ¶¶ 28-30; "[redacted][,]" ECF 2298-33 (Lembke Rep.) ¶ A.3; the research, which primarily measures time spent, is "[redacted][,]" ECF 2298-76 (Twenge Dep.) 140:20-41:5; the "[redacted][,]" ECF 2298-74 (Twenge Rep.) ¶ 7; and "[redacted][.]" ECF 2298-9 (Christakis Rep.) ¶ 12.

to indisputably relevant matters, resulting in helpful testimony on the core question of causation. The Court should deny Defendants' motion.[2]

II. ARGUMENT

A. Defendants ignore the Court's failure to warn rulings.

Defendants argue that Plaintiffs' experts' causation opinions are inadmissible because they consider the effect of features that (supposedly) are "no longer part of this case." Mot. at 1. This argument fails at the starting block. ***All*** of the features of Defendants' platforms are "part of this case" given the Court's rulings on failure to warn and the State AGs' deception claims.[3] The Court said unequivocally that Section 230 does not bar "liability predicated on a failure-to-warn of known risks of addiction attendant to ***any*** platform features ***or as to platform construction in general***." ECF 1214 at 2 (emphasis added). Because "any platform features" and "platform construction in general" are relevant to the causation and harm inquiries, Plaintiffs' experts should be permitted to testify about them. The "disentangling" exercise Defendants insist upon is thus unnecessary and unwarranted.[4] That is enough to dispose of Defendants' motion.[5]

Instead of briefing the issue, Defendants have engaged in a form of self-help—taking *as a given* that their Ninth Circuit appeal has succeeded and that certain features connected to failure to warn and the State AGs' deception claims are off the table for present purposes. Their only defense of this position comes in a single conclusory sentence. Mot. at 4 n.3. Defendants do not explain why the two cases they cite are inconsistent with the Court's rulings or how they are relevant to the

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[2] Defendants' motion purports to challenge Plaintiffs' experts on the basis of both Section 230 and the First Amendment, but they do not make (and hence have waived) any arguments directed at the First Amendment. As such, Plaintiffs' brief focuses on Section 230.

[3] Contrary to Defendants' arguments, the State AGs' deception claims are broader than common-law failure to warn, as a deception claim seeks to hold a company accountable for any statement or omission that has a tendency or capacity to mislead the public. *See, e.g.*, *Williams v. Gerber Prods. Inc.*, 552 F.3d 934, 938 (9th Cir. 2008).

[4] Nevertheless, Plaintiffs' experts *have* provided testimony specific to the design-defect and unfair-practices features. *See infra* Section II.E.b.

[5] Defendants otherwise misdescribe Plaintiffs' evidence as devoid of expert testimony on warnings causation. Even if such testimony were required (it is not), the record is chock-full of such evidence. *See* Pls.' Omnibus Opp. to Defs.' Mot. for Summ. J. at 11-12.

evidentiary issues before the Court. As Defendants have "failed to brief specific grounds" for their position, there is no reason for the Court to consider it in its ruling. ECF 430 at 41 n.60.

If honored, Defendants' procedurally defective gambit would result in extreme substantive prejudice to Plaintiffs. Indeed, the majority of Defendants' brief is devoted to inviting precisely that prejudice, arguing that Plaintiffs' general causation experts should be prohibited from presenting their opinions to the jury because they did not undertake an unnecessary filtration exercise, removing from their expert analyses any trace of the supposedly off-limits features. If Plaintiffs' experts had done what Defendants insist they should have—declined to consider the impact of the platforms as a whole, and all their requisite features, in providing their general causation opinions—Defendants surely would be complaining about ***that*** failing instead, seeking summary judgment on the failure to warn and deception theories. Given the importance of failure to warn to the overall shape of this litigation, Defendants' effort to reframe the Section 230 discussion in a manner that assumes the validity of their underlying position rather than accept the Court's prior orders should be rejected.

But Defendants' brief would still be meritless even if the ***only*** features relevant to proving causation and damages were those which could be relied upon by a personal injury plaintiff raising a design defect (but not a failure to warn) product liability claim or a State AG raising an unfairness claim, respectively (hereinafter the "design-defect and unfair-practices features"). As the remaining sections demonstrate, even in this counterfactual world, Defendants' motion should still be rejected.

B. Defendants misunderstand the scope of Section 230.

The fundamental problem with Defendants' argument is that it misunderstands the scope of Section 230. Their argument, in a nutshell, is that Plaintiffs' experts must offer opinions that the design-defect and unfair-practices features, "***standing alone***, are capable of causing the harms Plaintiffs allege." Mot. at 2 (emphasis added). But Section 230 creates no requirement that Plaintiffs strip away third-party content (or other features) from the causal chain. This is what the Ninth Circuit means when it rejects, repeatedly, parties' efforts to create a "but for" test (that test being, could this cause of action move forward but for the content on the site—or, closer to home, are design-defect and unfair-practices features, standing alone, capable of causing the harms alleged).

Just last year, the Ninth Circuit rejected such arguments (advanced by one of the Defendants here) and reaffirmed that "it is not enough that a claim, including its underlying facts, stems from third-party content for § 230 immunity to apply." *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 742 (9th Cir. 2024). In other words, a claim and its underlying facts ***can*** stem from third-party content without triggering Section 230. *See* ECF 430 at 11 ("Section 230 does not create immunity simply because publication of third-party content is relevant to or a but-for cause of the plaintiff's harm."); *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 853 (9th Cir. 2016) ("Publishing activity is a but-for cause of just about everything [Defendants are] involved in."). If an unbarred claim can "stem" from third-party content, it follows *a fortiori* that an expert should be able to consider third-party content (and other features) in the course of opining that Defendants' design-defect and unfair-practices features were a substantial factor in causing harm. Section 230 only enters the equation when the overall duty plaintiffs seek to impose would "oblige[] the defendant to 'monitor third-party content'—or else face liability[.]" *Calise*, 103 F.4th at 742 (quoting *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019)).

This makes sense. Take *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009). The court held that Section 230 did not bar the plaintiff's promissory estoppel claim, in a case where the platform had promised to remove false profiles of her. But there was no way the plaintiff could prove that claim without introducing evidence of defendant's publication of, and failure to remove, the offending content. Failing to remove the content is what constituted the defendant's breach of the promise. *Id*. at 1107 ("[I]f Yahoo did make a promise, it promised to take down third-party content from its website[.]").Or consider *Calise*. Whether Meta was liable for breaching its promise to combat scam ads would of course require evidence about scam ads. *Calise*, 103 F.4th at 742-43. And to determine what harm flowed from the breach, the jury would have to consider the harm caused by those scam activities (*i.e.*, the harm caused by their publication). *See id*. In short, evidence of content can come in without catching the Section 230 tripwire.

Judge Kuhl correctly understood the import of these cases in evaluating (and rejecting) the same argument that Defendants pursue here: namely, "that Plaintiffs' general causation experts should be excluded because they rely on and fail to disentangle the impact of potentially harmful

third-party content on their opinions." *Soc. Media Cases*, 2025 WL 2807828, at *6 (Cal. Super. Ct. Sep. 22, 2025); *compare with* Mot. at 4 (arguing that Plaintiffs' experts must "disaggregate the impact of content and protected features from any actionable aspect of the platforms."). Judge Kuhl rejected this "over-generalized argument [as] unpersuasive[.]" *Soc. Media Cases*, 2025 WL 2807828, at *6. She held, in relevant part:

> Of course, Defendants' social media platforms could not operate without content, and much of that content is third-party content. Many of Plaintiffs' experts make the unsurprising observation that some of the third-party content minors see on social media can be harmful. Insofar as minors are harmed by content appearing on a social media platform, this court has held that Section 230 precludes liability for such harm.... But even if third-party content is a "but-for" cause of the harm suffered by a plaintiff, the action is not barred by Section 230 if the cause of action does not seek to hold the provider liable for allowing that content to exist on the social media platform or failing to remove the content.

Id. at *7; *see also Soc. Media Cases*, JCCP 5255, Order Denying Mot. for Summ. J. at 1-3 (R.K.C.) (Cal. Super Ct. Nov. 5, 2025) (denying summary judgment based on Section 230 and First Amendment because "[t]he cause of R.K.C.'s harms is a disputed factual question that must be resolved by the jury."). So too with the features this Court found to be closely tied to content, and this Court should reach the same conclusion.

C. Defendants improperly apply Section 230 as a rule of evidence.

In addition to its other infirmities, Defendants' argument would require the Court to accept that Section 230 can even operate as a rule of ***evidence***, rather than just as a rule of preemption or as an affirmative defense to liability. Nothing in the text of the statute indicates it should be read this way (and Defendants do not so much as attempt a textual argument). Further, no court has ever held Section 230 restricts the admission of evidence. *See, e.g.*, *In re Apple Inc. App Store Simulated Casino-Style Games Litig.* ("*Casino Games Litig.*"), 2025 WL 2782591, at *20 n.10 (N.D. Cal. Sep. 30, 2025) ("[T]he Court sees no reason why it cannot consider facts that are unrelated to [the allowable liability theory]."). The standards governing admissibility of expert testimony in cases involving a Section 230 defense are no different from any other case, with admissibility contingent on the threshold relevance and reliability requirements of Rule 702 and *Daubert*.

Section 230 "depends on the duty being imposed." *Id.*[6] To analyze whether it preempts a plaintiff's claim, courts are "require[d]" to "look to the legal 'duty,'" not what evidence the plaintiff could use to show that the duty was violated. *Calise*, 103 F.4th at 742. Thus, it is "doubtful that Section 230 restricts the universe of . . . evidence that may be considered." *Casino Games Litig.*, 2025 WL 2782591, at *20 n.10.

Defendants' arguments to the contrary ignore the "established judicial rule" that conduct "which for some reason [is] barred from forming the basis for a suit, may nevertheless be introduced" for another admissible purpose—here, for example, to prove the significance of an interference with a public right. *See United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 670 n.3 (1965). This general principle that evidence may be admissible for some purposes even if barred for others has been well-litigated in cases involving other defenses and preemption of state tort law. Take—as Defendants do (Mot. at 5)—cases applying the *Noerr-Pennington* doctrine, which involves both statutory immunity and First Amendment protections. When considering admissibility, courts consistently allow plaintiffs to use evidence of *Noerr-Pennington*-protected conduct to support other, non-prohibited claims. *See, e.g.*, *In re Brand Name Prescription Drugs Antitrust Litig.*, 186 F.3d 781, 789 (7th Cir. 1999) (court "erred in treating the doctrine as a rule of evidence that forbids the introduction of evidence"); *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prods. Liab. Litig*., 497 F. Supp. 3d 552, 633 n.61 (N.D. Cal. 2020) (allegations about petitioning conduct admissible as evidence of unfair conduct even if not independently actionable). These courts reason that "a defendant may not be held liable based solely on conduct that is protected by the First Amendment, but that does not mean that such conduct is altogether inadmissible or necessarily lacking in evidentiary value." *In re Gen. Motors LLC Ignition Switch Litig.*, 2015 WL 8130449, at *2 (S.D.N.Y. Dec. 3, 2015). So, for example, while a plaintiff could not bring a claim that a defendant's lobbying efforts constituted fraudulent misrepresentation, they *could* use evidence involving those lobbying efforts to prove knowledge and intent for a racketeering claim based on fraud. *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017

[6] The evidentiary principles here equally apply to the State AGs' claims, as there is no material difference in evidentiary rules between claims sounding in tort and consumer protection.

WL 4890594, at *15 n.4 (N.D. Cal. Oct. 30, 2017).

Here, the jury will decide (among other things) whether Defendants' conduct created an "unreasonable interference with a right common to the general public." Restatement (Second) of Torts § 821B (1979).[7] To decide whether Defendants' failure to implement meaningful parental controls, time-of-use limitations, or effective age verification unreasonably interfered with a public right to health, safety, or education, the jury may consider evidence about platform construction in general because such evidence bears on the significance of the interference with a public right. *See id*. at cmt. e ("significance" involves "weighing [] the gravity of the harm against the utility of the conduct"). Whether, and to what extent, Defendants significantly interfered with a public right by failing to provide, for example, adequate parental controls or effective time-of-use controls necessarily turns on how dangerous the platform is for youth, including because its architecture contributes to compulsive use. In undertaking that inquiry, how the design-defect and unfair-practices features intersect with the platform as a whole is relevant. The jury could not, for example, decide that failing to provide time-of-use limitations was a significant interference with a public right without understanding how the platform's features collectively led youth to use the platform compulsively. In short, what is and isn't unreasonable need not be decided in a vacuum but will require expert testimony about Defendants' platforms and their harms writ-large. Such evidence, then, has great evidentiary value and is admissible even if certain aspects of that conduct cannot, standing alone, serve as an independent basis for liability.

While the foregoing discussion concerns the public nuisance claims maintained by certain bellwether school districts, the same logic applies to all those districts' negligence claims and the AGs' consumer protection claims. To understand whether, how, and to what extent Defendants breached their duty of care or violated consumer protection laws, the jury will need to understand how the Defendants' platforms work as a whole—and how use of the platforms impacts adolescents' behavioral and mental health.

This common-sense approach explains why, even apart from *Noerr-Pennington* and its

[7] Courts look to the Restatement to define public nuisance in the applicable bellwether states. ECF 2288 at 12; ECF 2289 at 12-13; ECF 2290 at 15; ECF 2296 at 15.

progeny, courts routinely admit evidence that could not form the basis for liability under certain theories, if relevant to other theories. For instance, in *George v. Ford Motor Co.*, the court declined to exclude evidence of alleged misrepresentations to federal agencies in a state-law tort case, even though "such misrepresentations could not in themselves provide a basis for a state-law cause of action, because any such claim would be preempted by the federal regulatory scheme." 2007 WL 2398806, at *8 (S.D.N.Y., Aug. 17, 2007). Casting aside the defendant's attempt to transform a preemption rule into a rule of evidence, the district court found that "[t]he Supreme Court manifestly did not lay down a rule of evidence, precluding admission of evidence of alleged misrepresentations to federal agencies in any state-law tort case." *Id*.

Defendants' own cited cases further prove the point. In *In re Smith & Nephew Birmingham Hip Resurfacing Hip Implant Products. Liability Litigation* ("*Birmingham Hip*"), the court declined to exclude expert testimony that was applicable to preempted claims because it "could support the non-preempted claim of off-label promotion." 2023 WL 6794318, at *9 (D. Md. Oct. 12, 2023). The court also held that an expert could opine on the safety of the product "as a whole," even though claims related to particular components were preempted. *Id.* at *5, 9.

Defendants do not explain how or why Section 230 preemption should be understood to "lay down a rule of evidence," *George*, 2007 WL 2398806, at *8, and there is no good reason to find that it does so. Far from requiring Plaintiffs' experts to show "that the at-issue features are capable of causing harm 'independent of [the platform's] role as a facilitator and publisher of third-party content,'" Mot. at 15 (alteration in original) (quoting *Doe v. Grindr Inc.*, 128 F.4th 1148, 1153 (9th Cir. 2025), *cert. denied*, No. 24-1202, 2025 WL 2906619 (U.S. Oct. 14, 2025)), *Grindr* stands for the same rule as every other Section 230 case cited by the Parties: Section 230 only applies if the duty imposed by the claim "seek[s] to hold [the defendant] responsible as a publisher or speaker." *Grindr*, 128 F.4th at 1153 (second alteration in original) (quoting *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1093 (9th Cir. 2021)). Whether third-party content (or "liability-barred features") is involved in the causal chain has no relevance to whether Section 230 shields a defendant from a particular claim. Nothing in *Grindr*, a case in which the claim turned entirely on third-party content and publishing (communications with abusive adults), says otherwise. *See id.* at 1153, 1153 n.3

(rejecting but-for causation standard). Neither does the First Amendment set such a legal boundary. In *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), the Court asked whether "lawful [or] unlawful collective action" was "the basis for a damages award." *Id.* at 933-34 (recognizing "the importance of avoiding the imposition of punishment for constitutionally protected activity"). There, liability was barred because the plaintiff specifically sought to punish the NAACP for its "use of speeches, marches, and threats of social ostracism." *Id.* at 933. That situation is far afield from ours, where Plaintiffs are ***not*** seeking to impose on Defendants an (impermissible) duty to remove or monitor third-party content.

Defendants' other citations are no more convincing. In the few cases Defendants cite where courts fully excluded testimony on the basis of preemption, it was because the testimony was ***only*** relevant to preempted claims. *See, e.g.*, *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 644-46 (5th Cir. 2005) (testimony offered solely in support of fully preempted claim); *Lowery v. Sanofi-Aventis LLC*, 2021 WL 872620, at *21 (N.D. Ala. Mar. 9, 2021) (same); *In re: Lipitor (Atorvastatin Calcium) Mktg., Sales Pracs. & Prods. Liab. Litig.*, 2016 WL 2940778, at *3 (D.S.C. May 6, 2016) (same); *see also In re Cir. Breaker Litig.,* 984 F. Supp. 1267, 1283 (C.D. Cal. 1997) (defendants' experts did not present any evidence "tying non-protected activities" to their claimed injuries).

Defendants' other cases address summary judgment rather than the admissibility of expert testimony. *Greenwood Utils. Comm'n v. Mississippi Power Co*., 751 F.2d 1484, 1496, 1503 (5th Cir. 1985) (review of summary judgment decision); *Nuveen Mun. High Income Opportunity Fund v. City of Alameda, Cal.*, 730 F.3d 1111, 1123 (9th Cir. 2013) (same). Summary judgment and Rule 702 are distinct inquiries with non-overlapping standards. *Stilwell v. Smith & Nephew, Inc.*, 482 F.3d 1187, 1192 (9th Cir. 2007).

Finally, in Defendants' other cases, the challenged experts were excluded on Rule 702 grounds having nothing at all to do with Section 230 preemption. *See Malden Transp., Inc. v. Uber Techs., Inc*., 404 F. Supp. 3d 404, 416-18, 423-24 (D. Mass. 2019) (damages expert did not reliably calculate unfair competition damages attributable to anticompetitive activity); *Conley v. R.J. Reynolds Tobacco Co*., 286 F. Supp. 2d 1097, 1104-05 (N.D. Cal. 2002) (expert never offered opinion as to time of injury despite opining that plaintiff's death was caused by defendant).

In sum, the Court must consider whether Plaintiffs' expert evidence is admissible under Rule 702, just as in any other case. *See infra* Sec. E. That Plaintiffs' experts discuss third-party content and features other than the design-defect and unfair-practices features in explaining their opinions has no bearing on their opinions' admissibility. *See Soc. Media Cases*, 2025 WL 2807828, at *7 (that "[m]any of Plaintiffs' experts make the unsurprising observation that some of the third-party content minors see on social media can be harmful" is no reason to exclude).

D. Defendants seek to have it both ways by using content moderation as a defense.

Even if Section 230 were an evidentiary rule, Defendants may not invoke the statute "to shield [themselves] from potentially damaging evidence" while using that same type of evidence "as a sword to slice through the foundation of Plaintiffs' case." *Sidibe v. Sutter Health*, 103 F.4th 675, 701 (9th Cir. 2024) (cleaned up). Yet that is exactly what Defendants attempt in this case.

Meta offers the testimony of Professor Emilio Ferrara, a Professor of Computer Science. Professor Ferrara advances six opinions that are ***exclusively*** concerned with Meta's content moderation policies and practices, including that these policies are [redacted] Ex. 2 (Ferrara Rep.) ¶ 262. TikTok offers the testimony of Dr. Chris Mattmann, who works as a social media researcher. Dr. Mattmann offers similar opinions, claiming that TikTok's content moderation is [redacted] Ex. 3 (Mattmann Rep.) ¶ 20. He devotes a lengthy section in his report (aptly titled "Content Moderation") to [redacted]. *Id*. ¶¶ 66-172. Finally, Dr. Sandeep Chatterjee, Snap's proposed expert, is currently the CEO of a technology consulting company. His report engages in the same gambit as Drs. Ferrara and Mattmann, opining that Snap [redacted] Ex. 4 (Chatterjee Rep.) ¶¶ 88, 90-91.

If Defendants were correct about the scope of Section 230, the testimony of these defense experts would be barred in toto because their opinions "turn[] on content and protected publishing activities." Mot. at 4. That Defendants themselves would stand in violation of the "Section 230 rule of evidence" they propose is proof enough that rule is wrong.

E. Defendants do not present a proper *Daubert* challenge.

Under Rule 702 and *Daubert*, courts act as "a gatekeeper, not a fact finder." *Primiano v. Cook*, 598 F.3d 558, 568 (9th Cir. 2010), *as amended* (Apr. 27, 2010). A court fulfills its role as a gatekeeper by confirming that expert testimony "both rests on a ***reliable*** foundation and is ***relevant*** to the task at hand." *Id.* at 564 (citation omitted, emphasis added). "When an expert meets the threshold established by Rule 702 as explained in *Daubert,* the expert may testify and the jury decides how much weight to give that testimony." *Id.* at 565.

Defendants' motion purports to challenge both the reliability and relevancy of Plaintiffs' expert testimony, but in reality does neither. Defendants' arguments go to the weight that should be afforded to Plaintiffs' experts' causation opinions. That is for the jury to decide.

a. Plaintiffs' experts' methodology is sufficiently reliable.

Defendants do not show that Plaintiffs' experts used unreliable methodologies. That Defendants disagree with the experts' conclusions does "not establish that plaintiffs' experts utilized scientifically unreliable methodologies." *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 289 F. Supp. 2d 1230, 1246 (W.D. Wash. 2003). While Defendants try to transform their attack on conclusions into a methodological challenge by arguing that Plaintiffs' experts ***should have*** performed studies isolating the effects of individual at-issue features on adolescents' health, Mot. at 2, 7-12, that is a challenge to weight, not admissibility. *Pelican Int'l, Inc. v. Hobie Cat Co.*, 655 F. Supp. 3d 1002, 1033 (S.D. Cal. 2023) ("[A]n argument that an expert should have addressed different evidence at best, goes to the weight or credibility of the expert's analysis, not its admissibility.") (cleaned up). In rejecting an identical argument in the JCCP, Judge Kuhl explained "there is no requirement that a causation expert rely on a specific study or other scientific publication expressing precisely the same conclusion at which the expert has arrived." *Soc. Media Cases*, 2025 WL 2807828, at *3; *see also Elosu v. Middlefork Ranch Inc.*, 26 F.4th 1017, 1024-25 (9th Cir. 2022) (experts may eschew studies entirely and rely solely on their "specialized knowledge and experience").

Uncertainty in scientific literature, such as about the relative impact of content or features on youth mental health, is not a reason to exclude expert testimony. The Ninth Circuit has

"consistently recognized the difficulties in establishing certainty in the medical sciences," which means that "an expert [need not] be able to identify the sole cause of a medical condition in order for his or her testimony to be reliable." *Messick v. Novartis Pharms. Corp.*, 747 F.3d 1193, 1198-99 (9th Cir. 2014). An expert's testimony need only be premised on "good grounds, based on what is known." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 590 (1993) (cleaned up). Accordingly, experts may rely on studies that go partway and then bridge "the gap" to their own conclusions. *Kennedy v. Collagen Corp.*, 161 F.3d 1226, 1229-30 (9th Cir. 1998).

Defendants' insistence on a study isolating the effects of particular features on youth mental health is belied by Defendants' own experts' concessions that [redacted] *e.g.*, Ex. 5 (Baiocchi Rep.) ¶ 64, and unhelpful to the trier of fact, since [redacted] on these platforms. Ex. 6 (Auerbach Rep.) ¶ 99. Still more, Defendants' own expert acknowledges that [redacted]. Ex. 5 (Baiocchi Rep.) ¶ 64.[8] Far from interpreting *Daubert* to mandate studies under such circumstances, the Ninth Circuit has "long recognized that it may not always be possible to conduct certain types of studies," *Wendell v. GlaxoSmithKline LLC*, 858 F.3d 1227, 1236-37 (9th Cir. 2017), particularly when doing so would raise "ethical concerns." *United States v. Sandoval-Mendoza*, 472 F.3d 645, 655 (9th Cir. 2006). This commonsense limitation "does not prevent the admission of Plaintiffs' experts' testimony." *Wendell*, 858 F.3d at 1237; *see also Conceptus, Inc. v. Hologic, Inc.*, 2012 WL 44237, at *10 (N.D. Cal. Jan. 9, 2012) (*Daubert* does not require experts to "do the impossible"); *McBride v. Houston Cnty. Health Care Auth.*, 2015 WL 3648995, at *4 (M.D. Ala. June 11, 2015) (expert's failure to conduct unethical studies exposing humans to potentially harmful conditions is no basis for

[8] When Meta performed and published a study that intentionally exposed hundreds of thousands of users to more negative content, it triggered an "editorial expression of concern." *See* Ex. 7 [Boland Dep., Ex. 25 at 1] ("In an experiment with people who use Facebook, we test whether emotional contagion occurs…The experiment manipulated the extent to which people (*N*=689,003) were exposed to emotional expressions in their News Feed."); Inder M. Verma, *Editorial expression of concern: Experimental evidence of massive-scale emotional contagion through social networks*. 111 PNAS No. 29 (Jul. 22, 2014), available at https://www.pnas.org/doi/10.1073/pnas.1412469111 (noting "a matter of concern that the collection of the data by Facebook may have involved practices that were not fully consistent with the principles of obtaining informed consent").

Daubert challenge); *Dunston v. Huang*, 709 F. Supp. 2d 421, 431 (E.D. Va. 2010) (similar).

b. Plaintiffs' experts' opinions are relevant to the causes of action.

Rule 702's relevance requirement considers the "fit" between an expert's testimony and the issues in the case. This is determined by the requirements of the underlying claim. *See Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1320 (9th Cir. 1995) (on remand) (considering substantive tort requirements in assessing whether expert evidence was helpful under 702). The school districts here raise negligence and (for certain Bellwether districts) public nuisance; and the State AGs raise consumer protection claims.

To prove the tort claims, the school districts are required only to establish that Defendants' conduct was a "substantial factor" in causing harm. *Barrett v. Harris*, 86 P.3d 954, 960-61 (Ariz. Ct. App. 2004); *John Crane, Inc. v. Jones*, 604 S.E.2d 822, 825-26 (Ga. 2004); *Rogers v. Kasdan*, 612 S.W.2d 133, 136 (Ky. 1981); *Camp v. Jiffy Lube No. 114*, 706 A.2d 1193, 1195-96 (N.J. Super. Ct. App. Div. 1998); *Walton v. Premier Soccer Club, Inc.*, 311 A.3d 406, 419 (Md. Ct. App. 2024); *Brown v. Nat'l Oil Co.*, 105 S.E.2d 81, 84-85 (S.C. 1958). Neither claim requires the school district plaintiffs to show that Defendants' platforms (either taken as a whole or with regard to individual features) were the ***sole*** cause of their harms, or that certain features were not also a substantial factor. The State AGs' consumer protection claims require them to prove that Meta's statements or actions were likely to deceive members of the public (for deception claims) and that Meta engaged in unfair or unconscionable conduct (for unfairness claims). Section 230 does not alter these substantive requirements and therefore does not alter Rule 702's relevance analysis.

Testimony from Plaintiffs' general causation experts relates to relevant issues that are indisputably parts of the case. This is true in three broad respects. *First*, and returning to where we started, ***all*** the features on Defendants' platforms are "at issue"—because Plaintiffs' theories encompass failure to warn of, and deceptive acts related to, the "risks of addiction attendant to any platform features or as to platform construction in general." ECF 1214 at 2. There is no need for "disentangling work," Mot. at 13, when all features—as well as the risks of Defendants' overall platform design—remain actionable through Plaintiffs' negligence, nuisance, and consumer protection claims.

Second, Plaintiffs' experts testify at length about each specific design-defect and unfair-practices feature. *See, e.g.*, ECF 2298-9 (Christakis Rep.) ¶ 195 ([redacted]); ECF 2298-21 (Cingel Rep.) ¶¶ 118-30 ([redacted]); ECF 2298-27 (Goldfield Rep.) ¶¶ 379-82, 412-20, 435-36, 452-54 (TikTok's [redacted]); ECF 2298-45 (Murray Rep.) ¶¶ 197-204 ([redacted]); ECF 2298-37 (Mojtabai Rep.) ¶¶ 186-88, 193-94 (discussing research measuring [redacted]); ECF 2298-33 (Lembke Rep.) 24 ¶ B.4.a.vi.A, 46 ¶ B.4.c.i.A, 66 ¶ B.4.g.i.C (discussing [redacted]); Ex. 1 (Prinstein Rep.) ¶ 45 (beauty filters [redacted]). Testimony from qualified experts that each of these specific features—offered by each of these Defendants—can cause precisely the types of harm at issue in this litigation is the *sine qua non* of general causation testimony. Defendants' belief that this testimony is unhelpful cannot be squared with the testimony these experts offer. *See Finley*, 301 F.3d at 1008.

Third, to the limited extent Plaintiffs' general causation experts discuss content on Defendants' platforms, nothing in the law forecloses them from doing so. "[A] general causation expert only will opine that the design or operation of a social media platform is *capable* of causing injury. Such expert is not required to opine that content cannot also cause harm." *Soc. Media Cases*, 2025 WL 2807828, at *7 (emphasis in original). Tellingly, none of the cases Defendants cite on this point actually involve general causation experts. *Cf. Innovative Block of S. Tex., Ltd. v. Valley Builders Supply, Inc.*, 603 S.W.3d 409, 423 (Tex. 2020) (exclusion of damages expert); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 143, 146-47 (1997) (exclusion of specific causation expert).

In the end, Defendants' criticisms of Plaintiffs' experts are no basis to find their testimony irrelevant or inadmissible. "If Defendants believe that [these experts' opinions are] insufficient evidence to demonstrate that a particular platform caused a particular type of harm, then they will be free to so demonstrate at trial." *Soc. Media Cases*, 2025 WL 2807828, at *40.

F. Defendants seek to usurp the role of the jury.

Ultimately, Defendants' disagreement lies not with the reliability or relevance of Plaintiffs'

experts' opinions, but with their conclusions—namely, that Defendants' platforms (and their failure to warn about, and other deceptive acts related to, them) are capable of causing harm, irrespective of whether content is too. *See supra* n. 1. This is not a reason to exclude the testimony. Quite the opposite: resolving disagreements between experts, and evaluating the persuasiveness of expert testimony, is firmly within the province of the jury. This is "not different in kind from a jury's responsibility for applying other legal and factual distinctions on which they are instructed in other cases." *Soc. Media Cases*, 2025 WL 2807828, at *7. For example, "[j]uries are frequently called upon to decide the extent to which a plaintiff's emotional harm is caused by the defendant's actionable conduct or, instead, by other influences." *Id*.

Defendants' true concern appears to be that a jury could return a finding of liability on grounds prohibited by Section 230 or the First Amendment. Mot. at 4. "[H]owever, the proper remedy for those concerns is care in instructing the jury with respect to what it must find in order to hold [Defendants] liable[,]" "not exclusion of evidence that is otherwise relevant[.]" *In re Gen. Motors*, 2015 WL 8130449, at *2. Defendants' assertion that "jury instructions are not an adequate remedy for improper expert testimony" is doubly incorrect. Mot. at 15. First, as explained at length in this brief, none of the testimony offered by Plaintiffs is improper under Section 230 or the First Amendment. Second, courts regularly use jury instructions to "help the jury compartmentalize the allegations and evidence." *United States v. Ford*, 2021 WL 5042985, at *5 (D. Alaska Oct. 29, 2021); *see also United States v. Escalante*, 637 F.2d 1197, 1202-03 (9th Cir. 1980) (jury instruction is sufficient to cure prejudice from evidence "applicable only to limited defendants or in a limited manner"). This includes *Daubert* itself, which names jury instructions as a method for guiding consideration of evidence that has been deemed admissible. *Daubert*, 509 U.S. at 596. The jury's role as a factfinder and arbiter of justice is one of the core elements of the American legal system, for social media companies and everyone else alike.

III. CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motion to exclude Plaintiffs' general causation experts based on Section 230 or the First Amendment.

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Respectfully submitted,

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